

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

SAMUEL BROWN,

Plaintiff,

v.

Civil Action No. **3:22CV796**

S. NEWCOMB, *et al.*,

Defendants.

MEMORANDUM OPINION

Plaintiff, a Virginia inmate, submitted this action and requested leave to proceed *in forma pauperis*. The pertinent statute provides:

In no event shall a prisoner bring a civil action [*in forma pauperis*] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Plaintiff concedes that he has at least three other actions or appeals that have been dismissed as frivolous or for failure to state a claim. (*See* ECF No. 5, at 2 (citing *Brown v. Marsh*, No. 1:03CV20; *Brown v. Hathaway*, No. 5:09–CT–3003–FL (E.D.N.C. Apr. 20, 2009); *Brown v. Hathaway*, No. 5:09–CT–3004–BO, 2009 WL 10194651, at *1 (E.D.N.C. Sept. 29, 2009).) Plaintiff's current complaint does not suggest that he is in imminent danger of serious physical harm.

By Memorandum Order entered on January 20, 2023, the Court directed Plaintiff, within eleven (11) days of the date of entry thereof, to show good cause why he should be permitted to proceed *in forma pauperis*. The Court explained that if Plaintiff failed to respond, or failed to

establish good cause, the action would be dismissed without prejudice, and he may resubmit the action with the full \$402.00 filing fee.

Plaintiff failed to respond to the January 20, 2023, Memorandum Order. Accordingly, this action will be DISMISSED WITHOUT PREJUDICE. *See* Fed. R. Civ. P. 41(b).

An appropriate Order shall issue.

Date: 2 March 2023
Richmond, Virginia

/s/ JAG
John A. Gibney, Jr.
Senior United States District Judge